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least, extravagant. The second seems of such doubtful verity that most readers would wish to know the authority for it.

Legal education probably has more unsolved problems than any other field of intellectual effort. Those engaged in the attempt to solve them are eager for light. They have looked forward to the publication of the *Carnegie Report*, as an aid to the solution of these problems. It is with a real sense of disappointment that they will realize that now, after eight years of patient waiting, when the American Bar Association and numerous other bar organizations are formulating definite and well-considered plans for raising standards and strengthening our educational system, the results of this study are so vague and so inconclusive with respect to fundamental matters. This sense of disappointment is increased when one finds that the conclusions with respect to law school organization and methods are so far removed from the facts. The chief value of the report is its presentation of historical data, and in that it raises squarely the question whether we are to leave undisturbed the educational system which we know definitely is defective and which is progressively growing worse, or whether we are to assist in carrying forward the program of the American Bar Association to raise standards and classify the schools. We believe that there will be little doubt in unprejudiced minds as to the course which should be pursued.

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SELECTED CASES ON REAL PROPERTY. By JOSEPH D. SULLIVAN. Chicago: CALLAGHAN & Co. 1921. pp. x, 1096.<sup>1</sup>

THE LAW OF REAL PROPERTY. By HERBERT T. TIFFANY. Chicago: CALLAGHAN & Co. 1920. 3 vols. pp. ix, 3666.

These two works are reviewed together because of similarities in method and because the author of the casebook announces in his preface his indebtedness to Mr. Tiffany in the following words:

"The volume is especially designed for use with Tiffany on Real Property and practically all of the cases it contains are cited in the foot-notes of Tiffany's work."

The object of this collection of three hundred or more cases, as stated in the preface, is to give "one case on each important principle of the law of real property, and in a few instances, where necessary to illustrate difficult doctrines, more than one case." The cases given are mostly recent cases, although a few early leading cases are given, as well as occasional extracts from treatises. The selections have been made with good judgment, and it is the best *one volume* casebook on the whole of the law of real property which we have seen. Assuming that this book is to be used as an "illustrative" casebook in connection with a textbook study of the law, we might be able to agree with the author that a single case sufficiently illustrates some of the simpler principles of the law of real property, but it is, of course, impossible for any one case to give a sufficient idea of the more involved doctrines of this subject. This the author has realized in his discussion of the Rule in Shelley's Case and eight useful cases are given to illumine the application of this rule. But in connection with the Rule against Perpetuities, a vastly more difficult and complex subject, only four cases are given. Of these four, two give limitations held not to be within the Rule and a third has nothing

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<sup>1</sup> This review, in so far as it treats of Sullivan, *Selected Cases on Real Property*, is based upon the comments of Professor Nathan Abbott of the Columbia Law School.

to do with the Rule, excepting by an inference, which a student reader would not be likely to make. There is no case which contains any of the involved and important history of the Rule. Even the case of *Cadell v. Palmer*<sup>1a</sup> which finally formulated the rule in 1833 is omitted and we find nothing in the book which would give a student any idea of the application of the Rule to classes, to separable limitations, to accumulations, to contingent remainders, to rights of entry for condition broken or to options. Thus while the selections of the author are good, the omissions made necessary by the limitations of a one volume book on the most inclusive branch of the law, make us wonder whether some student who has used it may not come to realize that "a little knowledge is a dangerous thing."

Turning now to the parent work by Mr. Tiffany we find a book much more difficult to review. The first edition was published in 1903. By an examination of the prefaces of the two editions it is possible to determine the author's purpose in the work and to derive therefrom the standards by which the work should be measured.

In the preface to the first edition, we find this statement: "The intention, in writing this work, is to present in moderate compass, the principles which govern the various branches of the law of land." The modifications present in the second edition are summarized by Mr. Tiffany in the preface to the second edition as "a more extended treatment of the subject, a more copious citation of cases and a more frequent and fuller discussion of the problems which present themselves." The topical arrangement of the two editions is identical. By reason of different, and in some instances additional sub-heads in the various chapters the number of topical paragraphs has increased from 577 to 677. The actual increase in material, however, is much greater than might be gathered from the foregoing. There are more than 30,000 cases cited as opposed to the approximately 14,000 cited in the first edition and there are 3,666 pages in the three volumes of the second edition as contrasted with 1589 pages of the former edition. Thus the quantitative aims of the second edition as stated by the author's preface seems to have been realized. The most valuable addition to the material is the citation, in footnotes, along with cases, of articles and editorial notes in the various law school magazines discussing the propositions under treatment. This feature brings before the reader a wealth of material heretofore largely inaccessible.

The amount of labor involved in the preparation of this second edition, must have been tremendous, and the service which this book renders to the profession is very great indeed. In view of these undoubted facts, it is with great hesitancy that the reviewer ventures to point out some features of the edition, which do not remedy the defects of the first edition as completely as all of Mr. Tiffany's friends and admirers would wish.

It is impossible to determine or state the availability of this book as a legal tool without discussing the general type of book to which both editions belong. In neither edition does the author purport to discuss the history of land law, in more than a cursory and elementary way. In fact, pages 16 to 39, which purport to give "an outline of the leading features of the system of feudal tenures," which the author states to be necessary to an understanding of the present law, is so truly an outline as hardly to serve the purpose for which it is avowedly inserted. Furthermore, some part of the historical treatment included is of doubtful value. For instance, the historical origin of common appendant is stated (§ 384) in terms which have generally been discarded by recent historians.<sup>2</sup> The book contains no argument or discussion of divergent views, no exposition of the

<sup>1a</sup> (1833) 1 Cl. & F. 372.

<sup>2</sup> See William, *Rights of Common* (1880) 37 *et seq.*

reasons basing the adoption of a rule, no attempt to indicate the author's opinion as to the trend of change often implicit in new decisions. For instance, the decision reached in *Huntington v. Asher*<sup>3</sup> is merely stated in a footnote (p. 1393) without the slightest indication that this case marks a trend to recognize the commercial importance of land as opposed to its agricultural importance which alone was recognized by the old common law. It does not then purport to be a legal treatise calculated to influence or guide the development of law. But it is not reasonable or just to determine the utility of a book by its failure to accomplish desirable ends never contemplated by the author.

The book in both editions is frankly a textbook digest. It purports to set forth "the principles which govern the various branches of the law of land." To undertake this task must have required the courage of a David and it is no marvel that the book does not attain its goal fully. It is rather a cause for admiration that it approaches, as nearly as it does, to such attainment. In order to make such a book valuable the writer must be familiar with the cases cited and must have generalized from the decisions, so that the "principles" which compose his text shall contain as little extraneous and undecided matter as possible. Furthermore, he must have before him as raw material for this process, decisions representative of all that really has been decided. The book fails in its primary purpose if it omits any part of the existent law, and in its usefulness to the practitioner if it fails to indicate the decision actually reached in the practitioner's jurisdiction upon the question under discussion. In addition to all of these requirements, such a textbook digest must be reliable in its citations. No case should appear in a footnote to a text principle unless that case decided the proposition enunciated by the text principle. A lawyer who cites cases to a court which do not support the proposition for which he cites them, soon loses the confidence of the bench, and the same is true in the attitude of the users of a textbook digest toward the book.

It is impossible to illustrate at length the ways in which this edition fails of completeness and, in parts, fails even of accuracy. The first sentence in § 387 is as follows:

"A profit a prendre in gross cannot be assigned in portions to different persons so that each of the assignees may exercise it separately, but all the assignees must exercise it in common; this being on the theory that otherwise the land would be injured as a result of the taking of profits therefrom by numerous persons."

This statement is not only not supported by most jurisdictions at the present day but the opposite result is reached in a case cited by the author in support of this "principle," and the manner in which the older rule of *Mountjoy's Case* is avoided is fully elaborated therein.<sup>4</sup> A principle honored only by exceptions to its application is hardly entitled to unqualified statement in a text digest.

In the sections dealing with the support of land and buildings (§§ 354, 355) there is no mention whatever of the very generally existent statutes regulating the support of buildings in municipalities and the tremendously important body of decisions clustered about them.<sup>5</sup>

The caution with which it is necessary to use the footnote citations was forced on the attention of the reviewer by a careful examination of the numerous

<sup>3</sup> (1884) 96 N. Y. 604.

<sup>4</sup> See *Funk v. Haldeman* (1866) 53 Pa. St. 229; *Chandler v. Hart* (1905) 161 Cal. 405, 119 Pac. 516.

<sup>5</sup> See *Regan v. Keyes* (1910) 204 Mass. 294, 90 N. E. 847; *Foster v. Zampieri* (1910) 140 App. Div. 471, 125 N. Y. Supp. 422, *aff'd* (1912) 206 N. Y. 704, 99 N. E. 1119; *Bergen v. Morton Amusement Co.* (1917) 178 App. Div. 400, 165 N. Y. Supp. 348; *Gordon v. Auto Club of America* (1917) 180 App. Div. 927, 167 N. Y. Supp. 585; *Carroll Blake Const. Co. v. Boyle* (1918) 140 Tenn. 166, 203 S. W. 945; *Zilka v. Graham* (1914) 26 Idaho 163, 141 Pac. 639.

cases cited in footnote 44, p. 1133. This footnote was not selected after a careful examination of a large number of other correct footnotes but was selected by chance and was found to be to a considerable extent illustrative of the cases cited in the other footnotes. The text at this point, which is an exact reprint of the first edition (1st ed. § 297), states as follows:

"On the other hand, his right to appropriate the water of the stream for what are considered 'extraordinary' uses, such as manufacturing and irrigation is restricted by the requirement that such appropriation must not so diminish the flow of water as materially to injure other proprietors lower down the stream;"<sup>44</sup>

In support of this "principle" the author cites thirteen cases.<sup>6</sup> Of these cases the actual decisions in only cases (2), (8), (9), (11), support the text principle. Of these four, (9) really stands for the text principle with the word "materially" left out, and case (11) is no longer good law in the jurisdiction which decided it.<sup>7</sup> There are dicta in cases (6) and (10) which support the text proposition with the word "materially" left out. Both of these cases in dicta say that if a lower proprietor suffers injury he has a cause of action. Cases (1), (3), (5), and (13) state decisions which do not come within the generalization of the text principle at all and in cases (3) and (5) there is no decision whatever as to any right or duty of riparian owners. The only decision in (1) is that as long as there was no sensible diminution, the plaintiff had no action. The language of Baron Parke is, as one might expect from the continuously unsuccessful advocate of the doctrine of reasonable user as applied to the law of water in England, a statement of that doctrine. This dictum, however, is not the law of England as to the so-called "extraordinary uses."<sup>8</sup> Cases (4), (7), and (12) are actually *contra* to the principle in support of which they are cited.

This fact, however, remains, after all criticisms which may be leveled against the book. It is a great beginning toward a task probably beyond the accomplishment of any one man's lifetime. Perhaps the author's fundamental error was his attempt to do more than was humanly possible. It is better to have some helpful guidance than none. There is probably no one work covering the entire subject as well as this one does, but more accurate guidance can be found by those who are able to refer to careful books each covering a small part of the entire subject.

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<sup>6</sup> (1) *Embrey v. Owen* (1851) 6 Exch. 353; (2) *Sampson v. Hodinott* (1857) 1 C. B. (N. s.) 590; (3) *Gould v. Stafford* (1888) 77 Cal. 66, 18 Pac. 879; (4) *Turner v. James Canal Co.* (1909) 155 Cal. 82, 99 Pac. 520; (5) *Rudd v. Williams* (1867) 43 Ill. 385; (6) *Anderson v. Cincinnati Southern Ry.* (1887) 86 Ky. 44, 5 S. W. 49; (7) *Gould v. Boston Duck Co.* (Mass. 1859) 13 Gray 42; (8) *Farrell v. Richards* (1879) 30 N. J. Eq. 511; (9) *Clinton v. Myers* (1871) 46 N. Y. 511; (10) *Garwood v. New York Central & H. R. R.* (1881) 83 N. Y. 400; (11) *Wheatley v. Chrisman* (1859) 34 Pa. St. 298; (12) *Tolle v. Corretti* (1868) 31 Tex. 362; *Nielson v. Sponer* (1907) 46 Wash. 14, 89 Pac. 155.

<sup>7</sup> See *Penn Coal Co. v. Sanderson* (1886) 113 Pa. St. 126, 6 Atl. 453; and cases and articles cited by the author, p. 1143, footnote 69.

<sup>8</sup> See *McCartney v. Londonderry, etc. R. R., Ltd.* [1904] A. C. 301, cited by our author on pp. 1135, 1136 and 1138.